

	)	
<b>L.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 15-0166</b>
	)	<b>Issued: May 10, 2016</b>
<b>DEPARTMENT OF THE NAVY, PUGET</b>	)	
<b>SOUND NAVAL SHIPYARD, Bremerton, WA,</b>	)	
<b>Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

On November 3, 2014 appellant filed a timely appeal from a September 23, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant established bilateral hearing loss causally related to factors of his federal employment.

On April 15, 2014 appellant, then a 77-year-old retired general foreman, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss as a result of

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

exposure to high levels of noise in his federal employment. He first became aware of his condition and of its relationship to his employment on January 1, 2012. Appellant notified his supervisor on April 15, 2014. A supervisor noted that appellant had retired effective July 3, 1992, which was also the last date of exposure to the conditions alleged to have caused his bilateral hearing loss. Appellant explained that he had not filed a claim within 30 days after injury because he was not aware of his hearing loss until recently.

On April 22, 2014 OWCP requested additional factual and medical evidence from appellant. It also requested that the employing establishment respond to its inquiries regarding his duties and facts surrounding the claimed injury.

In a checklist for filing a federal occupational hearing loss claim dated March 25, 2014, appellant stated that he had no history of ear or hearing problems and no hobbies involving exposure to loud noise. He noted that he was last exposed to hazardous noise at work in July 1992.

Appellant submitted his employment history on March 25, 2014. From April 5, 1954 through 1968, he worked as an electrician for the employing establishment aboard ships and in engine rooms, and was exposed to noise for eight hours per day. Hearing protection was not provided. From 1968 through 1969, appellant worked as an electrician for a private-sector employer (Anaconda Brass and Copper) in a smelter, and was exposed to noise for eight hours per day. Hearing protection was not provided. From 1969 through 1988, he worked as an electrician for the employing establishment and was exposed to noise generated by tools for eight hours per day. Hearing protection was not provided. From 1988 through 1990, appellant worked as a planner man for the employing establishment, and was exposed to noise from tradesmen working onboard a ship for four hours per day. Hearing protection was not provided. From 1990 through 1992, appellant continued to work as a general foreman for the employing establishment, and was exposed to noise from cranes responsible for train movement for eight hours per day. For this last position, appellant was provided with safety devices for hearing protection and used them.

Appellant submitted audiograms from a hearing conservation program dated from March 20, 1969 through April 28, 1992. The audiogram performed on March 20, 1969 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 15, 10, 10, and 10 decibels; left ear 15, 10, 5, and 20 decibels. The audiogram performed on April 28, 1992 tested the same frequency levels and revealed the following: right ear 10, 15, 15, and 20 decibels; left ear 10, 15, 15, and 25 decibels.

On May 12, 2014 appellant responded to OWCP's inquiries. He noted that he was enrolled in a hearing conservation program and had filed his claim in a timely manner.

On May 21, 2014 the employing establishment submitted a noise assessment worksheet for appellant detailing his noise exposure over the course of his federal employment. From April 7, 1969 through October 7, 1979, appellant was an electrician and was exposed to sound levels from 79 through 89 decibels continuously and from 85 through 110 decibels intermittently. From October 7, 1979 through July 27, 1985, he was a shop planner and was exposed to sound levels from 79 through 89 decibels continuously and from 85 through 110

decibels intermittently. From July 27, 1985 through February 15, 1987, appellant was a planner and estimator and was exposed to sound levels from 79 through 89 decibels continuously and from 85 through 110 decibels intermittently. From February 16, 1987 through January 19, 1990, he was a crane operator foreman and was exposed to sound levels from 80 through 90 decibels intermittently. From January 19, 1990 through July 3, 1995, appellant was a transportation general foreman and was exposed to sound levels from 62 through 92 decibels intermittently.

By letter dated June 17, 2014, the employing establishment noted that the majority of appellant's exposure to industrial noise would have occurred while employed as an electrician from April 7, 1969 through October 7, 1979. After this time period, appellant's position required him to spend approximately 50 percent of his time in an office environment with noise levels below 80 decibels.

By decision dated September 23, 2014, OWCP denied appellant's claim. It stated that he had failed to establish the factual component of fact of injury, as the evidence was insufficient to establish that he experienced noise exposure sufficient to cause a hearing loss. OWCP further stated that appellant had not established that, at the time of his retirement from the employing establishment, he had sustained hearing loss as a result of work-related noise exposure. It also noted that he had not submitted sufficient medical evidence to establish work-related hearing loss in connection with activities of his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>4</sup>

---

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>5</sup> Moreover, an injury does not have to be confirmed by eyewitnesses.

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish bilateral hearing loss causally related to factors of his federal employment.

The Board has recognized that a claimant may be entitled to a schedule award for hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.<sup>8</sup> Appellant submitted hearing conservation records from the employing establishment, which demonstrate his exposure to noise and a record of hearing loss over the period of employment. As such, appellant established that he sustained occupational noise exposure. However, there is no medical evidence of record from a qualified physician documenting current hearing loss. Without a diagnosis from a qualified physician that appellant has hearing loss, appellant has not met his burden of proof to establish occupational hearing loss, nor has he met his burden of proof to warrant further development by OWCP on the issue of occupational hearing loss.

As such, the Board finds that there is no medical evidence to establish hearing loss causally related to his employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment, is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP properly found that he did not meet his burden of proof in establishing his claim.

---

<sup>5</sup> *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008).

<sup>7</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>8</sup> *See J.R.*, 59 ECAB 710, 713 (2008).

<sup>9</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish bilateral hearing loss causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board